

REMARKS/ARGUMENTS

The Office is requiring restriction of the above-identified application as follows:

Group I: Claims 1-16 and 19-21, drawn to a composition comprising water, at least one metal salt of phosphorylated ascorbic acid and UV screening agent of formula (I) comprising at least one sulphonic function and at least one maleic anhydride polymer;

Group II: Claims 1-14, 17 and 19-21, drawn to a composition comprising water, at least one metal salt of phosphorylated ascorbic acid and UV screening agent of formula (II) comprising at least one sulphonic function and at least one maleic anhydride polymer;

Group III: Claims 1-14, 18 and 19-21, drawn to a composition comprising water, at least one metal salt of phosphorylated ascorbic acid and UV screening agent of formula (III) comprising at least one sulphonic function and at least one maleic anhydride polymer;

Group IV: Claims 1, 22 and 24-26, drawn to a method of depigmenting and/or bleaching the skin, preventing and/or combating skin marks, wrinkles and/fine lines on the skin, for preventing and/or combating the signs of aging of the skins and/or for combating the harmful effects of UV radiation;

Group V: Claims 1, 23 and 24-26, drawn to method of treating age marks by applying the compositions of claim 1 to skin; and

Group VI: Claim 27, drawn to a method for preparing a uniform aqueous composition comprising metal salt of phosphorylated ascorbic acid, water soluble UV-screening agent containing one sulphonic function and maleic anhydride polymer.

Applicants have elected Group I, Claims 1-16 and 19-21, with traverse.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the examiner if restriction is not required (M.P.E.P. §803). The burden of proof is on the Examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (M.P.E.P.

§803). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing sufficient reason and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

The Examiner has categorized the relationships between Groups I-VI as product and process of use. Patentable distinctness may be shown if either or both of the following can be shown: (A) that the process of using the product as claimed can be practiced with another materially different product or (B) that the product as claimed can be used in a materially different process of using that product (M.P.E.P. §806.05(h)). Therefore, the Examiner's reasoning is merely a restatement of the Examiner's conclusion that the two groups are patentably distinct. As the Examiner has provided insufficient reasons in support of this belief, the Examiner has not met the required burden, and accordingly, the restriction is believed to be improper and should be withdrawn.

The Examiner has categorized the relationships between Groups I-VI as unrelated. Patentable distinctness may be shown if different groups, not disclosed as capable of use together, having different modes of operation, different functions or different effects are independent. (M.P.E.P §806.04; M.P.E.P §808.01).

The Examiner, however, simply concludes that the inventions are unrelated because one relates to a method of preventing aging and the other relates to a method of screening skin wrinkling. The Examiner has not provided any evidence to support her position that the categorization of the groups meets the requirements under §806.04 and §808.01. In particular, the Examiner has not shown that the groups have different modes of operation, different functions or different effects. Accordingly, the restriction is improper and should be withdrawn.

Application No. 10/665,821

Reply to Office Action of December 30, 2005

Applicant submits this application is now in condition for examination on the merits
and early notification of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Richard L. Treanor
Registration No. 36,379

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

Daniel R. Evans, Ph.D.
Registration No. 55,868